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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,034	03/25/2004	Robert Allan Young	PRE-NGD-0138	5815
33751	7590	04/03/2009		
Greatbatch Ltd. 10,000 Wehrle Drive Clarence, NY 14031			EXAMINER SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER
			3775	
			NOTIFICATION DATE	DELIVERY MODE
			04/03/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/809,034	Applicant(s) YOUNG ET AL.	
	Examiner Richard Shaffer	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/30/2008; 10/1/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species IV (Figure 4b) in the reply filed on December 8th, 2008 is acknowledged.

Applicant asserted that claims 1, 3, 5-7, 9 and 11-18 read upon the elected species, the examiner agrees.

Claims 2 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 8th, 2008.

Claim Rejections - 35 USC § 112

The claim amendments filed on December 8th, 2008 are acknowledged and accepted by the examiner. The corresponding 35 U.S.C. 112, first paragraph rejections are hereby withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-7, 9, 11-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner et al (US Patent 6,669,701) in view of Foley et al (US Patent 5,681,311).

Steiner et al disclose a bone plate (**Figures 1-7**) with at least two axes with bone screw receiving holes comprising: threaded holes (**4**) having wide bevels; countersunk round holes (**4**) with the countersunk is approximately 25 degrees; the plate is adapted to receive a locking bone peg with a threaded head (**22**) and unthreaded body; the distance between two sets overlapping holes is approximately 15 mm due to the plate being for the femur in one embodiment, anatomical constraints in design, that several different overlapping holes could be used to meet the limitation, and the use of approximately is broad enough to encompass many other values; a bone screw (**11**).

Steiner et al fail to disclose the overlapping holes each being threaded. Foley et al teach (**Figures 14-16; Column 4, Lines 49-50**) that slots (**64**) allow for controlled flexing of the bone plate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form slots in-between the holes of Steiner et al to allow for a controlled flexing of the bone plate. This structure would connect holes (each with a threaded portion) together in an overlapping fashion.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner et al in view of Foley et al and in further view of Cesarone (5,851,207).

The combination of Steiner et al and Foley et al disclose and teach all of the claimed limitations except is silent as to a drill guide being used in combination which engages the holes of the bone plate to stabilize a drill. Cesarone teaches (**Column 1, Lines 14-37**) that using a drill guide minimizes misalignments and cause improperly secured plates. The drill guide (**Figure 1**) connects to the bone plate and ensures an orientation appropriate for a later bone screw. Thus, it would have been obvious to one

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having ordinary skill in the art at the time the invention was made to consider using the drill guide of Cesarone with the device of Steiner et al and Foley et al to accurately tap holes to be used for a non-threaded shaft, threaded head screw to correctly implant the screw and to secure the bone plate properly.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Shaffer/

Examiner, Art Unit 3775

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733